



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2004

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2004-6008

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205471.

The Texas Department of Criminal Justice (the "department") received a request for records pertaining to a named inmate. You state that some information from the inmate's death row file will be released but claim that the remaining portions of the death row file as well as the file from a previous incarceration are excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

You assert that portions of the submitted information are excepted from disclosure under section 552.134 of the Government Code. Section 552.134 states in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134. The information at issue relates to an inmate who was sentenced to death. Section 552.134(b) provides that section 552.134 is not applicable to information relating to an inmate who has been sentenced to death. *See id.* § 552.134(b)(2). However, you inform us that the information at issue was created during the inmate's previous incarceration for a non-capital offense, not during the inmate's incarceration on death row, and indicate that this information is not maintained in the inmate's death row file. Based on your representations, we conclude that this information is not "information about an inmate sentenced to death" and agree that section 552.134(a) is applicable. Further, we find that section 552.029 does not apply to this information. Therefore, the inmate's file from a previous incarceration must be withheld under section 552.134(a).<sup>1</sup>

You also seek to withhold a document from the inmate's death row file under section 552.134. The document at issue pertains to a second, non-death row inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, you must also withhold this document under section 552.134(a).

You assert that criminal history record information ("CHRI") found in the inmate's death row file is excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.<sup>2</sup> Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). In this instance, release of the submitted CHRI does not appear to be authorized under chapter 411. Therefore, the department must withhold CHRI found in the inmate's death row file under section 552.101 in conjunction with section 411.083 of the Government Code.

You also assert that the fingerprints found in the inmate's death row file are excepted from disclosure under section 552.101 in conjunction with section 560.003 of the Government Code.<sup>3</sup> However, the laws making such information confidential are intended to protect an individual's privacy. *See* Gov't Code § 559.002(1)(A) (individual whose biometric identifier is at issue may consent to its release). Because the right of privacy is purely personal and

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<sup>1</sup>As we are able to make this determination, we do not address your remaining arguments against the disclosure of this information.

<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>3</sup>We note that this section, formerly found at chapter 559 of the Government Code as section 559.003, was renumbered by the Regular Session of the Seventy-eighth Legislature, effective September 1, 2003. *See* Act of May 20, 2003, 78<sup>th</sup> Leg., R.S., ch. 1275, § 2 (78), 2003 Tex. Sess. Law Serv. 4140, 4144.

lapses at death, the fingerprints of the deceased inmate may not be withheld on the basis of section 560.003. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). As you claim no other exceptions for this information and it is not otherwise confidential by law, it must be released.

In summary, the department must withhold the inmate's file from a previous incarceration and the marked document from the inmate's death row file under section 552.134. The department must withhold the criminal history information contained in the inmate's death row file under section 552.101 in conjunction 411.083 of the Government Code. The remaining submitted information from the inmate's death row file must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

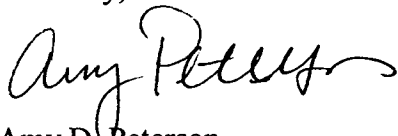
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a stylized flourish at the end.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 205471

Enc. Submitted documents

c: Ms. Mysti Hillis-Smith  
Attorney at Law  
4924 Montego Bay Drive  
Irving, Texas 75038  
(w/o enclosures)